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**THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE JUVENILE COURT**

Three Center Plaza
Boston, Massachusetts 02108

MARTHA P. GRACE
Chief Justice

July 11, 2005

Proposed Juvenile Court Rules

The Juvenile Court is inviting comments on the proposed revision to the Juvenile Court Rules which cover care and protection, guardianship of minor and adoption consent cases within its jurisdiction.

Before submission to the Chief Justice for Administration and Management and the Supreme Judicial Court for approval, you are invited to offer any suggestions or comments you may wish to provide.

The text of the proposed Juvenile Court Rules follows this message. Comments may be sent by email to: juvenilecourtrules@jud.state.ma.us or mailed to: Juvenile Court Rules, Attention: Attorney Nicola Pangonis, Administrative Office of the Juvenile Court, 3 Center Plaza, Boston, MA 02108, whichever is more convenient. Written comments should be received by September 2, 2005.

PROPOSED:

JUVENILE COURT RULES

**I. CARE AND PROTECTION, GUARDIANSHIP OF MINOR, AND
ADOPTION CONSENT PROCEEDINGS**

Rule 1. Applicability

These rules apply to all actions in the Juvenile Court Department for care and protection, including actions in which the need for parental consent to adoption is in issue, actions for guardianship of minors, and actions seeking to dispense with parental consent to adoption, including the procedure for appeals from adjudications, orders of commitment and orders dispensing with the need for parental consent to adoption, custody, guardianship or any other disposition of the child pursuant to G.L. c. 119, s. 24, and c. 210, s. 3. These rules also apply to actions for paternity and child support where expressly indicated .

Rule 2. Appointment of Counsel.

Counsel shall be appointed in accordance with the provisions of s. 29 of c. 119 and c. 211D of the General Laws, and Rule 3:10 of the Rules of the Supreme Judicial Court in care and protection proceedings pursuant to s. 24 of c.119 or s. 3 of c. 210.*

**The Delay Reduction Committee of the Supreme Judicial Court plans to consider the issue of appointment of counsel to facilitate timely representation these matters.*

Rule 3. Process

A. Service of process shall be accomplished by the petitioner.

B. Summons to Parent/Guardian; Service of Process by Publication.

1. Care and Protection Cases, G.L. c. 119, s. 24 et. seq.

Following the commencement of the case, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child, and, if a parent cannot be found, the legal guardian, if any. The summons or order of notice shall be on a form issued or approved by the court and shall be served on each of the parents of the subject child in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent.

(b) Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing if the parent, or legal guardian, if any, is present.

(c) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, on a written motion of the petitioner setting forth the diligent efforts made to ascertain said place of residence or whereabouts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (f), below.

(d) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (f), below.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (f) of this rule.

(f) Whenever service by publication is required in a care and protection case:

(i) The court shall, upon motion of the petitioner or other party, issue an Order for Service by Publication, and the petitioner shall cause notice to be published in accordance with the order in the newspaper or newspapers designated by the court once in each of three successive weeks, the final publication to appear no later than the pretrial conference date unless otherwise directed by the court.

(ii) Following publication in accordance with the order, counsel for the petitioner shall promptly complete and file in the Clerk-Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the court.

(iii) In a case involving two or more children who have the same parents, the petitioner may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

(iv) If, after the petitioner has perfected service of process by publication in accordance with this rule, no parent has appeared or can be found, a summons shall be issued to the child's legal guardian, if any, known to reside within the Commonwealth, and, if none, to the person with whom such child last resided, if known.

2. Guardianship of a Minor Cases, G.L. c. 201, s. 2 et seq.

Following the filing of a guardianship petition, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child unless a parent has assented to the filing of the petition, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the court and shall be served with a copy of the petition in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the minor is above the age of fourteen years and has not nominated the guardian proposed in the petition in conformance with the requirements of G.L. c. 201, s. 2, then service shall be made in the same manner on the minor.

(b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition.

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

(e) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

(f) If the place of residence or whereabouts of a parent is known but the petitioner has

been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (g), below.

(g) Whenever service by publication is required in a guardianship case:

(i) The court shall, upon motion of the petitioner or other party, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for guardianship is heard, unless otherwise directed by the court.

(ii) Following publication in accordance with the order, counsel for the petitioner shall promptly complete and file in the Clerk-Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the court.

(iii) In a case involving two or more children who have the same parents, the petitioner may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

(h) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration or its successor in accordance with subsection (d)(i) of this rule.

(i) No notice need be given to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court. An assent is not required when a parent executes an adoption surrender in conformance with G.L. c. 210, s. 2, or if the court has terminated parental rights pursuant to G.L. c. 210, s. 3.

(j) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner shall promptly file with the court.

(k) A motion for temporary guardianship may not be filed unless a permanent guardianship petition has been filed. A motion for the appointment of a temporary guardian shall be made in writing and shall be accompanied by an affidavit that sets forth the nature of the emergency requiring appointment of a temporary guardian and the particular harm sought to be avoided. If service of the summons or order of notice has not been made in accordance with Rule 3, a copy of a motion for temporary guardianship and written notice of its hearing shall be served with the summons or order of notice unless the court orders otherwise.

3. Paternity and Child Support Cases, G.L. c. 209C, s. 3(c); c. 119, s. 28; c. 201, s. 40

Following the filing of a complaint for paternity and/or for an order of child support, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the subject child unless a parent has assented to the filing of the petition, and upon the Department of Social Services if it is the child's legal custodian. The summons or order of notice shall be on a form issued or approved by the court and shall be served with a copy of the complaint in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the minor is above the age of fourteen years, service shall be made in the same manner on the minor.

(b) Personal service may be accomplished when the matter comes before the judge if the parent is present and upon a representative of the Department of Social Services if it is the child's legal custodian.

(c) If the Department of Social Services is not the legal custodian of the child, the petitioner shall provide notice to the department of the filing of the petition.

(d) If the place of residence or whereabouts of a parent cannot be found after diligent efforts, the court may order that service shall be accomplished on that parent, either within or without the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (f), below.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by delivery despite diligent efforts to do so, on a written motion of the petitioner, setting forth the diligent efforts made, the court may order service in accordance with subsection (f), below.

(f) Whenever service by publication is required in a paternity or child support case:

(i) The court shall, upon motion of the petitioner or other party, issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the complaint is heard, unless otherwise directed by the court.

(ii) Following publication in accordance with the order, counsel for the petitioner shall promptly complete and file in the Clerk-Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the court.

(iii) In a case involving two or more children who have the same parents, the petitioner may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

(i) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner shall promptly file with the court.

(ii) Following publication in accordance with the order, counsel for the petitioner shall promptly complete and file in the Clerk-Magistrate's office an Affidavit of Notice of Publication on a form issued or approved by the court.

(iii) In a case involving two or more children who have the same parents, the petitioner may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

(iv) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice which the petitioner shall promptly file with the court.

Rule 4. Filing of Birth Certificates.

[Also applicable to Paternity and Child Support Cases]

The petitioner shall file a certified copy of the birth certificate of each child named in the petition unless the court orders otherwise. The petitioner may request an order from the court to produce said document pursuant to s. 2A of c. 46 of the General Laws, if the petitioner does not have custody of said child(ren).

Rule 5. Service and Form of Papers

[Also applicable to Paternity and Child Support Cases]

A. Every motion or other paper filed in court shall be promptly served by the attorney or party filing it by mailing or delivering a copy to each attorney of record, and each party appearing pro se, and every guardian ad litem appointed for the child as a next friend.

B. Unless a motion is made during a hearing or trial, any request for a court order shall be made by written motion accompanied by an affidavit signed by the person with personal knowledge of the

factual basis of the motion, and shall state with particularity the grounds therefor, and shall set forth the relief or order sought, provided however, that the following types of motions are not required to be accompanied by an affidavit: motions in limine, motions to strike, motions for discovery, motions for continuance or change of court date.

C. All motions other than those which do not require a hearing shall be scheduled by the court in accordance with procedures established by the court division. A written motion, other than one which may be heard ex parte, and notice of the hearing of the motion, shall be served no later than seven days prior to the hearing pursuant to paragraph A of this rule. When service is made by mail, three days shall be added to the seven days' notice requirement. A judge may fix another time period for notice.

D. Every motion or other paper filed with the court, other than documents offered in evidence, shall be on 8 ½" x 11" white paper and shall have a heading which includes the name, division and county of the court; the docket number, the title of the action and a designation of the nature of the motion or paper, and shall set forth the name, address, telephone number of the attorney or pro se party filing it, and the Board of Bar Overseers registration number of the attorney; and the date on which the motion or other paper was filed with the court.

Rule 6. Appearances

[Also applicable to Paternity and Child Support Cases]

All counsel shall file a notice of appearance.

Rule 7. Investigator's Report

In a care and protection action, including actions in which the need for parental consent to adoption is in issue, the report of the court-appointed investigator shall be filed in the Clerk's Office within sixty days after the appointment of the investigator, unless the court otherwise orders. A request for extension of time for the filing of the court investigator's report shall be in writing, signed by the court investigator and approved by a justice of the juvenile court. The court investigator shall file a request for extension of time no later than fourteen days prior to the date the report is due, provided however, that the court may permit the filing of a request for an extension at some other time in the interests of justice. If the court approves a request for an extension, the court investigator shall provide a copy of any such approved request to all counsel of record and to any party who is not represented by counsel.

Rule 8. Assignment of Cases

At the conclusion of the temporary custody hearing in a care and protection case, a judge shall be assigned to that case in accordance with procedures established by the Chief Justice of the Juvenile Court Department. Nothing in this rule shall preclude changing the assignment of a case to, or matters being heard by, a different judge in the interests of justice.

Rule 9. Discovery

A. Department of Social Services or Licensed Placement Agency: In any care and protection case in which the Department of Social Services or a licensed placement agency is or becomes a party, the Department of Social Services or the licensed placement agency shall produce for each other party a copy of its entire social services file, including reports made pursuant to G.L. c. 119, s. 51A and s. 51B, within thirty days from the date the case is commenced, or within thirty days from the date the Department of Social Services or the licensed placement agency becomes a party, whichever is later. No party receiving material produced pursuant to this rule shall further duplicate or divulge the material to any person not a party to the case unless by order of court.

When producing a copy of its social services file in compliance with this rule, the Department of Social Services or licensed placement agency may withhold therefrom privileged material and work product of its attorney, and may withhold therefrom the names, and other reasonable, identifying data, of past or present foster parents of a child who is a subject of the case or of an adoptive parent or prospective adoptive parent of a child who is a subject of the case or of the reporter on reports made pursuant to G.L. c. 119, s. 51A, subject to orders for further production.

The attorney for the Department of Social Services or licensed placement agency shall produce with the copy of the file a list of the materials and information withheld. The attorney for the Department of Social Services shall have an ongoing duty to produce for each other party on a timely basis any additions to the social services file made after initial production required in this subsection.

B. Other Discovery: Other discovery may be had only by leave of court on such terms as the court prescribes. Leave of court shall be requested by motion in accordance with Rule 5.

Rule 10. Motion/Status Conference

A. There shall be a motion/status conference within ninety days after the commencement of any proceeding governed by these rules. All pending discovery motions, if any, shall be heard at the conference. The conference shall result in a status order addressing, at the least, service of process in accordance with Rule 3; a discovery order and schedule (if further discovery is to be had); any special evidentiary issues requiring pretrial hearing and the scheduling thereof; any special issues regarding services being offered or delivered to the family pending trial requiring pretrial hearing and the scheduling thereof; the scheduling of the pretrial conference.

B. Nothing in this rule shall preclude the court from hearing the motions at other times in the interests of justice.

C. Counsel for the parties shall file written certification that mediation has been discussed pursuant to Rule 5 of Rule 1:18 of the Supreme Judicial Court.

Rule 11. Pretrial Conference in Care and Protection Cases

A. Pretrial Conference. A pretrial conference shall be scheduled at the time of the first appearance to occur no later than one hundred twenty days after the filing of the petition, provided however, that it shall be scheduled to occur after the date upon which the court investigator's report is due. All parties are required to be present with counsel at the pretrial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pretrial conference.

B. Pretrial Memorandum. The parties shall file with the court at the pretrial conference a joint pretrial memorandum, provided however, the Chief Justice of the Juvenile Court Department may waive the requirement of joint pretrial memoranda for a particular division upon the written request of the First Justice. In the event the Chief Justice waives the requirement that joint pretrial memoranda be filed in a particular division, each attorney shall file an individual pretrial memorandum. All pretrial memoranda, whether joint or individual, shall be signed by counsel of record certifying that all counsel have met and discussed all of the issues required herein and shall set forth:

1. Name, address and telephone number of trial counsel;
2. Names and date and place of birth of each parent;
3. Names and place of birth of each child named in the petition;
4. Whether parents/guardians have been served [petitioner];
5. Certification that discovery has been completed; and if discovery has not been completed, a list of discovery items not yet completed and the compliance date;
6. Relief sought, including whether or not there will be a request for a decree dispensing with the need for parental consent to the adoption, custody, guardianship or other disposition of the child named in the petition;
7. An identification of the specific issues to be litigated at trial [Not a restatement of statutory language.];
8. A stipulation of all uncontested facts;
9. A numerical list of proposed exhibits (no objections) to be introduced at trial;
10. An alphabetical list of pre-marked objectionable exhibits and detailed grounds for objections including document, page number, paragraph, and sentence.
11. A list of proposed witnesses with expert witnesses clearly designated;
12. An estimate of trial time;
13. A procedural history of the case;
14. A statement addressing such matters as may aid in the disposition of the action;

The pretrial memorandum or memoranda shall also include, where applicable:

15. Whether a writ of habeas corpus is needed;
16. Whether an interpreter is needed for trial;
17. A statement addressing the possibility of settlement, including an explanation, if any, why settlement cannot be reached;
18. A statement regarding consolidation or interdepartmental assignment including whether it has been requested.

Parties shall be bound by the witness and exhibit lists set forth in the pretrial memoranda, except by leave of court for good cause shown.

Failure of counsel to appear at any scheduled pretrial conference or to meet and participate in the drafting of the pretrial memorandum or to otherwise fail to comply with the provisions of the court's order, if any, may result in the imposition of sanctions. The court may award costs against any party or attorney whose unjustified absence or lack of preparation prevented the conduct of a pretrial conference.

C. Scheduling the Hearing on the Merits. At the pretrial conference, the court shall schedule a hearing on the merits to be heard within twelve months of the filing of the petition.

Rule 12. Subpoenas

[Also applicable to Paternity and Child Support Cases]

Subpoenas shall be served and enforced as provided by Mass. R. Civ. P. 45 and may be issued by the office of the Clerk-Magistrate or as provided in Mass. R. Civ. P. 45.

Rule 13. Sanctions; Contempt

[Also applicable to Paternity and Child Support Cases]

A. Sanctions: If a party, or an attorney, engages in conduct that either delays the progress of litigation, or wastes judicial resources, or causes inconvenience to other parties or the court, or impedes or interferes with the efficient processing of a case, without sufficient justification as determined by the court, the court may order the party, or the attorney, or both, to pay reasonable costs and expenses. Such costs and expenses must relate to resources wasted or unnecessarily expended by the court and the parties because of said conduct, however, the court is not required to precisely determine the amount of such costs and expenses and may approximate the same.

B. Contempt: Enforcement of compliance with court orders may be sought by means of civil contempt, which shall proceed in accordance with the provisions of Mass. R. Civ. P. 65.3 (b) - (h). Proceedings for summary contempt shall be held in accordance with the provisions of Mass. R. Crim. P. 43. Prosecutions for criminal contempt shall proceed in accordance with the provisions of Mass. R. Crim. P. 44.

Rule 14. Trial Judge's Findings of Fact and Conclusions of Law: Notification by Clerk of Issuance of Findings of Fact and Conclusions of Law.

A. Trial Judge's Findings of Fact and Conclusions of Law. The trial judge upon making an adjudication or issuing an order of commitment or an order dispensing with the need for consent to adoption shall file with the Clerk consistent with time standards promulgated by the Chief Justice of the Juvenile Court Department, findings of fact and conclusions of law to support said order and/or adjudication.

B. Order or Decree dispensing with consent to adoption. In all cases in which the court issues an order dispensing with the need for consent to adoption, the court shall enter the order or decree on a document separate from any findings of fact and conclusions of law.

C. Notification to All Parties by Clerk. Immediately upon the filing of said findings of fact and conclusions of law the Clerk shall mail a copy to each party.

Rule 15. Appeal

A. Entry of Adjudication, Order of Commitment, Order Dispensing with the Need for Consent to Adoption, Allowance or Denial of Guardianship Petition: Upon the trial judge's making an adjudication, an order of commitment, an order dispensing with the need for consent to adoption, or an allowance or denial of a guardianship petition, the Clerk shall forthwith enter that adjudication, order, allowance or denial on the court's docket.

B. Notice. Immediately following the Clerk's entry of the above adjudication, order, allowance or denial on the docket, the Clerk shall notify all parties by mail of the entry of said adjudication, order, allowance or denial. The Clerk shall note on the docket the names of the persons to whom he/she mails such notice, with the date of the mailing. This notice shall include: 1) a copy of said adjudication, order, allowance or denial; 2) the date of the Clerk's entry, and 3) notice that each party has thirty (30) days from said date of entry within which to file a claim of appeal.

C. Claim of Appeal. An appeal, as permitted by G.L. c. 119, s. 27, shall be governed by the Massachusetts Rules of Appellate Procedure. The claim of appeal shall be taken to constitute the "notice of appeal" for the purposes of applying the Massachusetts Rules of Appellate Procedure. The notice of appeal and any request for a transcript, if required, shall be signed by the party or parties taking the appeal, unless the appellant is the minor subject of the action; a claim of appeal that is not so signed by the party or parties shall not be accepted for filing by the Clerk.

[Note: Rule 3(f) of the Rules of Appellate Procedure may also require the filing of certain motions along with the notice of appeal signed by the party or parties.]

D. Record on Appeal. In addition to the requirements of the Rules of Appellate Procedure, the record on appeal as assembled shall include a copy of the trial judge's findings of fact and any conclusions of law.